



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 946 and Part 980**

**[Doc. No. AMS-FV-13-0068; FV13-946-3 FIR]**

**Irish Potatoes Grown in Washington and Imported Potatoes;  
Modification of the Handling Regulations, Reporting  
Requirements, and Import Regulations for Red Types of  
Potatoes**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Affirmation of interim rule as a final rule.

**SUMMARY:** The Department of Agriculture is adopting, as a final rule, without change, an interim rule that exempted red types of potatoes from minimum quality, maturity, pack, marking, and inspection requirements of the Washington potato marketing order and the potato import regulation for the 2013-2014 and subsequent fiscal periods. This rule also continues in effect the action that required handlers of red types of potatoes to submit reports during the period that red types of potatoes are exempt from regulation. This rule is expected to reduce overall industry expenses and increase net returns to producers and handlers while giving the industry the opportunity to explore alternative marketing strategies.

**DATES:** Effective July 21, 2014.

**FOR FURTHER INFORMATION CONTACT:** Teresa Hutchinson, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: Teresa.Hutchinson@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following website:

<http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>; or by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 946, as amended (7 CFR part 946), regulating the handling of Irish potatoes grown in Washington, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including potatoes, are regulated under a Federal marketing order, imports of these commodities into the United States is prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for domestically produced commodities.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866, 13563, and 13175.

The handling of Irish potatoes grown in Washington is regulated by 7 CFR part 946. Prior to this change, red types of potatoes were subject to the requirements contained in the order's handling regulations (§ 946.336). The Washington potato industry was concerned that the cost of mandatory inspection for red types of potatoes, which has increased, may outweigh the benefits of having the quality regulations in place. By exempting red types of potatoes from handling regulations, the industry expects to reduce overall expenses and provide handlers the opportunity to explore alternative marketing strategies.

Therefore, this rule continues in effect the interim rule that exempted red types of potatoes from the order's

handling regulations for the remainder of the 2013-2014 fiscal period and subsequent fiscal periods. This rule also continues in effect the action that required handlers of red types of potatoes to submit reports during the period that red types of potatoes are exempt from regulation. Assessments on all fresh red types of potatoes handled under the order will remain in effect during the exemption period.

Imported potatoes are subject to regulations specified in 7 CFR part 980. Under those regulations, imported potatoes must meet the same or comparable grade, size, quality, and maturity requirements as specified for domestic potatoes under the order. Therefore, the exemption of red types of potatoes from the minimum grade, size, quality, and maturity requirements of the order also exempts red-skinned, round types of potatoes imported into the United States from the same requirements.

In an interim rule published in the **Federal Register** on February 12, 2014, and effective February 15, 2014, (79 FR 8253, Doc. No. FV-13-0068, FV13-946-3 IR), § 946.336 was amended to exempt red types of potatoes from the order's handling requirements for the remainder of the 2013-2014 fiscal period and subsequent fiscal periods. In addition,

§ 946.143 was modified to require that each person handling red types of potatoes submit a monthly report to the State of Washington Potato Committee (Committee) during the period that red types of potatoes are exempt from regulation. Lastly, pursuant to the section 8e, §980.1 was revised to exempt imported red-skinned, round types of potatoes from the import regulations.

### **Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are 43 handlers of Washington potatoes subject to regulation under the order and approximately 267 producers in the regulated production area. Small

agricultural service firms are defined by the Small Business Administration as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000. (13 CFR 121.201)

For the 2011-2012 marketing year, the Committee reports that 11,018,670 hundredweight of Washington potatoes were shipped into the fresh market. Based on average f.o.b. prices estimated by the USDA's Economic Research Service and Committee data on individual handler shipments, the Committee estimates that 42, or approximately 98 percent of the handlers, had annual receipts of less than \$7,000,000.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for Washington potatoes for 2011-2012 was \$7.90 per hundredweight. Taking the 2011-2012 shipments of fresh potatoes in the marketing order area (11,018,670 hundredweight), multiplying it by the average producer price for Washington potatoes, \$7.90, and then dividing it by the number of Washington potato producers (267) equates to an average gross annual revenue per producer of approximately \$326,021. In view of the foregoing, the

majority of Washington potato handlers and producers may be classified as small entities.

Information from the Foreign Agricultural Service, USDA, indicates that the dollar value of imported fresh potatoes averaged \$128.962 million from 2008 to 2012, ranging from a low of approximately \$106.502 million in 2012 to a high of approximately \$155.358 million in 2008. Taking the average dollar value of imported fresh potatoes, \$128.962 million, and dividing it by the number of potato importers, 571, results in average annual receipts per importer of approximately \$226,000. Since this is below the SBA definition for small businesses (less than \$7 million in annual sales), most potato importers may be classified as small entities.

This rule continues in effect the action that exempted red types of potatoes from the order's handling regulations and modified the order's reporting requirements for the remainder of the 2013-2014 fiscal period and subsequent fiscal periods. This rule also continues in effect the action that exempted imported red-skinned, round type potatoes from the minimum grade, size, quality, maturity, and inspection requirements of the potato import regulation. This change is expected to reduce overall

industry expenses and provide the industry with the opportunity to explore alternative marketing strategies.

This rule modifies §§ 946.143, 946.336, and 980.1. Authority for the change in the order's rules and regulations is provided in § 946.52 of the order, while authority for reports and records is provided in § 946.70. The change in the potato import regulation is required under section 8e of the Act.

This rule is not anticipated to negatively impact small businesses. This rule exempts red types of potatoes from minimum quality, maturity, pack, marking, and inspection requirements for the remainder of the current fiscal period and subsequent fiscal periods. Though inspections are not mandatory for such potatoes during the exemption period, handlers may choose to voluntarily have their potatoes inspected. Handlers are thus able to control costs based on the demands of their customers. The opportunities and benefits of this rule are equally available to all Washington potato handlers and producers, regardless of their size.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by



the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178, Generic Vegetable and Specialty Crops.

This rule continues in effect the action requiring the submission of a monthly handler report for fresh red types of potatoes handled during the exemption period. The action modified the "Russet Fresh Potato Report" that was previously established for reporting the handling of russet type potatoes to now include red types of potatoes during the period those types of potatoes are exempted from regulation. The modified form, now titled the "Self-Reporting Potato Form," will provide the Committee with information necessary to track shipments and collect assessments. The form modification has been approved by OMB.

While this rule continues in effect the action requiring a reporting requirement for red types of potatoes, the exemption of red types of potatoes from handling regulation also eliminates, for the exemption period, the more frequent reporting requirements imposed under the order's special purpose shipment exemptions (§ 946.336(d) and (e)). Under these paragraphs, handlers are required to provide detailed reports whenever they divert regulated potatoes for livestock feed, charity, seed,

prepeeling, processing, grading and storing in specified counties in Oregon, and experimentation.

Therefore, any additional reporting or recordkeeping requirements on either small or large handlers of red types of potatoes are expected to be offset by the elimination of the other reporting requirements currently in effect. In addition, the exemption from handling regulation and inspection requirements for red types of potatoes is expected to reduce industry expenses.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meetings were widely publicized throughout the Washington potato industry and all interested persons were invited to participate in Committee deliberations. Like all Committee meetings, the May 9, July 16, and December 10, 2013, meetings were public meetings. All entities, both large and small, were able to express views on this issue.

Comments on the interim rule were required to be received on or before April 14, 2014. No comments were received. Accordingly, for the reasons given in the interim rule, USDA is adopting the interim rule as a final rule, without change.

To view the interim rule, go to:  
<http://www.regulations.gov/#!documentDetail;D=AMS-FV-13-0068-0001>

This action also affirms information contained in the interim rule concerning Executive Orders 12866, 12988, and 13563; the Paperwork Reduction Act (44 U.S.C. Chapter 35); and the E-Gov Act (44 U.S.C. 101).

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the Federal Register (79 FR 8253, February 12, 2014) will tend to effectuate the declared policy of the Act.

#### **List of Subjects**

##### **7 CFR Part 946**

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

##### **7 CFR Part 980**

Food grades and standards, Imports, Marketing agreements, Onions, Potatoes, Tomatoes.

**PARTS 946 and 980 [AMENDED]**

Accordingly, the interim rule that amended 7 CFR parts 946 and 980 and that was published at 79 FR 8253 on February 12, 2014, is adopted as final without change.

Dated: July 10, 2014.

Rex A. Barnes,  
Associate Administrator,  
Agricultural Marketing Service.

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